

TEXAS ETHICS COMMISSION

IN THE MATTER OF
HAROLD V. DUTTON, JR.,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-31803111

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (Commission) met on June 26, 2018, to consider sworn complaint SC-31803111. A quorum of the Commission was present. The Commission determined that there is credible evidence of violations of sections 254.031, 254.063, and 254.064 of the Election Code, laws administered and enforced by the Commission. To resolve and settle this complaint without further proceedings, the Commission adopted this resolution.

II. Allegations

The complaint alleged that the respondent: 1) did not disclose on campaign finance reports political contributions, political expenditures, and reimbursements; 2) did not timely file the January 2018 semiannual report; 3) did not timely file the 30-day and 8-day pre-election reports for the March 2018 primary election; and 4) did not properly disclose the identity and date of the March 2018 primary election in a campaign finance report.

III. Facts Supported by Credible Evidence

Credible evidence available to the Commission supports the following findings of fact:

1. The respondent is the state representative for District 142, and has been in office since 1985. The respondent was a successful candidate in the March 6, 2018, primary election.

Disclosure of Political Contributions, Expenditures, and Reimbursements

2. On the respondent's 8-day pre-election report for the March 2018 primary election, the respondent disclosed \$0 in total political contributions and political expenditures. After the filing of this sworn complaint on March 19, 2018, the respondent filed a corrected 8-day

report on March 28, 2018, that listed \$24,700 in political contributions and \$17,100.68 in political expenditures. In the respondent's corrected report, he states that his folder with all of the supporting data to file the 8-day report was thought to be lost, but was located when the campaign finance office was cleaned up.

3. The respondent's July 2017 semiannual report disclosed \$0 in total contributions and \$33,199.08 in total political expenditures. The respondent filed a corrected report on August 4, 2017, in which he listed the same totals for contributions and expenditures, but added a Schedule K (used to disclose interest, credits, gains, refunds and contributions returned to filer), in which he disclosed two reimbursements totaling \$1,636.08.

Filing of the January 2018 Semiannual Reports

4. The respondent filed his January 2018 semiannual report on January 19, 2018. The report was required to be filed by January 17, 2018.

Filing of the 30-Day and 8-Day Pre-Election Reports

5. The respondent filed his 30-day pre-election report for the March 2018 primary election on March 5, 2018. The report was due by February 5, 2018.
6. The respondent filed his 8-day pre-election report for the March 2018 primary election on March 11, 2018. The report was due by February 26, 2018.

Election Information

7. On the respondent's July 2017 semiannual report, he did not list an election date on the cover sheet.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

Disclosure of Political Contributions, Expenditures, and Reimbursements

1. Each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions. ELEC. CODE § 254.031(a)(1).

2. Each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures. *Id.* § 254.031(a)(3). Reports must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period, *Id.* § 254.031(a)(6), as well as any credit, interest, rebate, refund, reimbursement, or return of a deposition fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100. *Id.* § 254.031(a)(9).
3. The respondent filed his original 8-day pre-election report on March 11, 2018, and disclosed political contributions totaling \$0 and political expenditures totaling \$0.
4. The respondent corrected his 8-day report on March 28, 2018, and disclosed \$24,700 in political contributions and \$17,100.68 in political expenditures that were not included in the original report. Therefore, there is credible evidence of violations of sections 254.031(a)(1), 254.031(a)(3), and 254.031 (a)(6) of the Election Code.
5. The respondent corrected his July 2017 semiannual report on August 4, 2017, and disclosed two reimbursements, totaling \$1,636.08 that were not included in the original report. Therefore, there is credible evidence of violations of section 254.031(a)(9) of the Election Code.

Filing of the January 2018 Semiannual Report

6. A candidate shall file two reports for each year. ELEC. CODE § 254.063(a). The second report shall be filed not later than January 15. *Id.* § 254.063(c).
7. The respondent was a candidate with an active campaign treasurer appointment (Form-CTA) on file during the period and was therefore required to file the January 2018 semiannual report.
8. Credible evidence indicates the respondent did not timely file the January 2018 semiannual report. The respondent raised a defense due to the weather situation in Houston on the day the report was due. The respondent's administrative fine was waived.
9. Therefore, there is credible evidence of a violation of section 254.063 of the Election Code, but no civil penalty is being assessed.

Filing of the 30-Day and 8-Day Pre-election Reports

10. In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports. ELEC. CODE § 254.064(a). The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. *Id.* § 254.064(b). The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. *Id.* § 254.064(c).
11. The respondent was a candidate in the March 2018 primary election and had an opponent whose name appeared on the ballot. The respondent was not filing under a modified reporting schedule and was therefore required to file the 30-day and 8-day pre-election reports. Credible evidence indicates the respondent did not timely file the reports.
12. Therefore, there is credible evidence of violations of section 254.064 of the Election Code.

Election Information

13. Each campaign finance report by a candidate must include, *inter alia*, the identity and date of the election for which the report is filed. ELEC. CODE § 254.061(1).
14. The respondent's July 2017 semiannual report did not include the identity and date of the election at issue, namely the March 2018 primary election.
15. In the respondent's reply to the sworn complaint, he states that, in July of 2017, he had not yet decided whether or not he was going to run in the March 2018 election. On November 13, 2017, the respondent paid his filing fee to enter the race.
16. Ethics Commission Rules, § 20.219(4) requires semiannual reports to include the identity and date of the election for which the report is filed, *if known*. Here, the evidence indicates the respondent did not yet know in July of 2017 whether or not he would be running in the March 2018 election.
17. Therefore, there is credible evidence of no violation of section 254.061(1) of the Election Code.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the Commission:

1. The respondent neither admits nor denies the facts described under Section III or the Commission's findings and conclusions of law described under Section IV, and consents to

the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.

2. The respondent consents to the entry of this order before any adversarial evidentiary hearings or argument before the Commission, and before any formal adjudication of law or fact by the Commission. The respondent waives any right to a hearing before the Commission or an administrative law judge, and further waives any right to a post-hearing procedure established or provided by law.
3. The respondent acknowledges that: 1) each campaign finance report must include the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report, the full name and address of the person making the contributions, and the dates of the contributions; 2) each campaign finance report must include the amount of political expenditures that in the aggregate exceed \$100 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures; 3) each campaign finance report must also include the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period, as well as any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from the use of a political contribution or an asset purchased with a political contribution that is received during the reporting period and the amount of which exceeds \$100; and 4) the Election Code requires that semiannual reports and pre-election reports must be timely filed.

The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the Commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under Section 571.140 of the Government Code, and may be disclosed by members and staff of the Commission.

VII. Sanction

After considering the nature, circumstances, and consequences of the violations described under Sections III and IV, and after considering the sanction necessary to deter future violations, the Commission imposes a \$2,500 civil penalty.

VIII. Order

The Commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-31803111.

AGREED to by the respondent on this _____ day of _____, 20____.

Harold V. Dutton, Jr., Respondent

EXECUTED by the Commission on: _____.

Texas Ethics Commission

By: _____
Seana Willing, Executive Director